



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW - THIRD CYCLE

**Submission to the 34nd session of the Human Rights
Council's Universal Periodic Review Working Group**

March 2019, Geneva, Switzerland

ITALY

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report explains why Italy must revise its laws and policies concerning the right to life, especially those concerning advance refusals of medical treatments, and continue to prohibit assisted suicide.

a) Right to life and freedom of conscience

Advance refusal of medical treatments

3. To date, there is no legal framework in place concerning specifically euthanasia or assisted suicide in Italy. However, Articles 1 and 4 of Law No. 219/2017 allows for the possibility for a patient to make an advance refusal of life-prolonging medical treatments (so called DAT).
4. This legislation raises serious concerns with regard to the definition, provided by the legislator, of what medical treatments a patient can refuse. Indeed, according to Law No. 219/2017, "medical treatments" are understood in the broadest sense so as to include basic care such as artificial nutrition and hydration.
5. While this legislation does not formally regulate either euthanasia or assisted suicide, it achieves this result in practice insofar as it allows a patient to refuse a medical treatment that does not constitute therapeutic overkill.
6. Countries which have introduced laws on euthanasia and assisted suicide claim that adequate safeguards have been put in place to guarantee the autonomy of the patient, as well as the respect for his or her free, prior and informed consent. An increasing decline in societal regard for the human dignity of human life, especially people at vulnerable stage of life, carries an inherent danger of causing older persons in particular to assent to assisted suicide after reaching a point of feeling that they are burdens on their loved ones and those caring for them.
7. Law No. 219/2017 also lacks an expression provision guaranteeing the right to conscientious objection of the medical and legal professionals involved. Besides denying the patient's human dignity, and consequently his or her right to life, this legislation constitutes a violation of the fundamental human right of medical professionals and notaries to freedom of conscience, as enshrined in all major human rights treaties.

Assisted suicide

8. According to Article of 580 Italian Criminal Code, titled 'Instigation or help to suicide,' helping someone take their own life is punishable by five to twelve years in prison.

9. However, following the submission of a question of constitutional legitimacy in January 2018¹, the Italian Constitutional Court, with its Order No. 207/2018, decided to suspend its consideration of the question and gave an ultimatum to the Parliament to intervene by 24 September 2019, offering “the respect of certain situations deserving protection and to balance them with other constitutionally relevant goods”. In particular, the Court pointed to the existence of instances in which the enforcement of this criminal code provision would run contrary to the constitutional principles, namely: 1) the manifestation of an incurable disease; 2) the suffering of severe and subjectively intolerable pain and distress; 3) the subjection to life-sustaining treatments; 4) the patient’s retention of full mental capacity. In the absence of legislative action, the court will reopen the discussion and make its determination concerning the unconstitutionality of Article 580.
10. Despite these pressures, Italy should reaffirm the right to life as a supreme right requiring protection until natural death and therefore refrain from revising this provision. The Italian government should focus on providing patients with quality medical care and treatment, and not ending their lives, including by ensuring that patients have access to high-quality, comprehensive palliative care to control pain and other symptoms, and by providing them with appropriate psychological, social, and spiritual assistance.

The right to life in international law

11. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' Furthermore, Article 6(2) of the ICCPR sets out the conditions for applying the only exception to the general rule: Article 6(2): In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.
12. Furthermore, the right to life does not include a right to die, a principle set forth in the unanimous decision of the European Court of Human Rights in the 2002 case of *Pretty v. United Kingdom* and the 2011 case of *Haas v. Switzerland*. This particularly applies to the notion of state-endorsed doctor-assisted suicide. These cases affirm that the right to privacy under Article 8 and the prohibition of torture, inhuman, or degrading treatment or punishment under Article 3 of the European Convention on Human Rights must be understood in conjunction with Articles 2, which not only prohibits the State from intentionally and unlawfully taking life, but also obliges States to take appropriate steps to safeguard the lives of those within its jurisdiction.

Freedom of conscience in international law

13. The Universal Declaration of Human Rights (UDHR) states in its very first article that ‘all human being are... endowed with reason and conscience’, in addition to a specific provision protecting conscience in Article 18. The International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976 and has 168 State Parties, has a similar provision in Article 18 (1), protecting thought, conscience, and religion.

¹ Court of Milan, First Section, Order of 14 February 2018.

14. In Europe, the European Convention on Human Rights provides that ‘everyone has the right to freedom of thought, conscience and religion’. The Grand Chamber of the European Court of Human Rights (ECtHR) has ruled in favour of the right to conscientious objection in the military context in the case of *Bayatyan v. Armenia*². In the health sector, the ECtHR has yet to rule specifically on the matter, but has clearly anticipated the existence of such rights of conscientious objection in holding: ‘States are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services’³.
15. Moreover, the Parliamentary Assembly of the Council of Europe (PACE) adopted unequivocal language in Resolution 1763 (2010) , entitled ‘The right to conscientious objection in lawful medical care’: No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason’.⁴

Recommendations

16. In light of the aforementioned, ADF International suggests that the following recommendations be made to Italy:
 - (a) Recognize that the State has a duty and obligation to protect and defend the right to life under international law, acknowledging that there is no right to death under international law and that euthanasia and assisted suicide violate the right to life.
 - (b) Review its Law No. 219/2017 consistent with Italy’s obligations under the ICCPR and other international and regional human rights instruments protecting the right to life as well as the right to freedom of conscience.
 - (c) Ensure that patients are provided with high-quality palliative care;
 - (d) Refrain from decriminalizing assisted suicide, and instead implement laws aimed at protecting the right to life at every stage of human development.

² *Bayatyan v. Armenia* [GC], App No 23459/03, 7 July 2009.

³ *RR v. Poland*, no 27617/04, 26 May 2011, § 83.

⁴ Council of Europe Parliamentary Assembly, ‘The right to conscientious objection in lawful medical care’ (Resolution 1763, 2010)



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